

Remarks

In the Office Action mailed July 21, 2005, claims 1 through 5 were finally rejected under 35 USC 103(a) as being unpatentable over U.S. Patent 5,028,990 to Kotaki et al (hereinafter the '990 patent) in view of U.S. Patent 5,327,375 (hereinafter the '375 patent). Claims 6 through 8 had been withdrawn earlier pursuant to an August 25, 2004 election of species requirement. By this response, none of the claims have been amended.

The Examiner relies upon the device depicted in FIGS. 8A and 8B of the '375 patent as evidence of the claimed features missing from the '990 patent. The Examiner noted that FIG. 8A of the '375 patent teaches that the substantial entirety of the width of the container region is defined by the upper surface of the patterning stop region. This is incorrect, as recourse to FIG. 8A clearly shows that a significant portion of the width of the container region is defined by an upper surface **1512** of the transistor gate. In fact, the undulated nature of the transistor renders over half of the width of the container region defined by something other than the patterning stop region **1502**. To properly construe the coverage of the claim, it is imperative that "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970). To hold that the construction of FIG. 8A of the '375 patent is such that the substantial entirety of the width of the container region is defined by an upper surface of the patterning stop region would be to improperly destroy the plain meaning of that claim requirement. This the Examiner cannot do. Properly construed, the combination of the '990 patent and the device of FIG. 8A of the '375 patent fails to teach the limitation that the substantial entirety of the width of the container region is defined by an upper surface of the patterning stop region.

FIG. 8B is also defective, in that while it appears that the substantial entirety of the width of the container region is defined by an upper surface of the patterning stop region **1602**, the charge storage lamina (made up of electrodes **P2** and **P3** as well as capacitor layer **C**) takes up the entirety of the container region, leaving no room for the claimed electrical contact (shown, for example, as **48** in the Applicant's FIG. 1G). In fact, the storage container of the device of FIG. 8B of the '375 patent is too thin to accommodate such an electrical contact. Since this

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feature, which is clearly recited in the last clause of claim 1 as occupying at least a portion of the container region with the charge storage lamina, is neither taught, suggested nor possible in the device of FIG. 8B of the '375 patent, it does not correct the deficiencies of the '990 patent and therefore fails the bedrock principle for establishing a prima facie case of obviousness that all of the claim limitations must be taught or suggested, as discussed in MPEP 2143.03.

Since claim 1 is neither taught nor suggested by the combination of the '990 and '375 patents, the Applicant respectfully submits that the present rejection be withdrawn. As independent claims 2, 3 and 4 all recite similar features, the Applicant submits that their present rejection be withdrawn as well. Referring with particularity to claims 2, 3 and 4, the Applicant reiterates that the '990 patent does not teach a patterning stop region with a lower surface substantially coplanar with the top of the substrate, for reasons stated in previous responses. Clear indicia of such non-coplanar features are shown in all of the figures of the '990 patent, including FIG. 10 that was relied upon by the Examiner.

Conclusion

The Applicant respectfully submits that all of the claims are patentable over the cited art, and are entitled to a finding of allowability by the Examiner. The Examiner is encouraged to contact the undersigned to resolve efficiently any formal matters or to discuss any aspects of the application or of this response. Otherwise, notification of allowable subject matter is respectfully solicited.

Respectfully submitted,
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